

The Gazette of India

EXTRAORDINARY
PART II—Section 2
PUBLISHED BY AUTHORITY

No. 28] NEW DELHI, WEDNESDAY, MAY 23, 1956

LOK SABHA

The following Report of the Joint Committee on the Bill further to amend the Constitution of India was presented to Lok Sabha on 23rd May, 1956:—

Composition of the Joint Committee

Lok Sabha

Shri K. S. Raghavachari—*Chairman*.

MEMBERS

2. Pandit Thakur Das Bhargava
3. Shri Fulsinhji B. Dabhi
4. Shrimati Jayashri Raiji
5. Mulla Abdullahai Mulla Taherali
6. Shri H. G. Vaishnav
7. Shri Radhelal Vyas
8. Shri S. C. Samanta
9. Shri Bheekha Bhai
10. Shri Lakshman Singh Charak
11. Shri M. K. Shivananjappa
12. Shri K. T. Achuthan
13. Shri P. T. Thanu Pillai
14. Shri B. P. Jhunjhunwala
15. Shri B. R. Bhagat
16. Shri C. D. Pande
17. Shri Sinhasan Singh
18. Shri Debendra Nath Sarmah

19. Shri Niranjan Jena
20. Shri Rayasam Seshagiri Rao
21. Shri N. Ramaseshaiah
22. Shri S. R. Rane
23. Shri M. S. Gurupadaswamy
24. Shri Sivamurthi Swami
25. Shri Sadhan Chandra Gupta
26. Dr. Ch. V. Rama Rao
27. Shri U. M. Trivedi
28. Shri N. C. Chatterjee
29. Shri Bhawani Singh
30. Shri C. D. Deshmukh

Rajya Sabha

31. Shri R. M. Deshmukh
32. Shri B. M. Gupte
33. Shri Chandulal P. Parikh
34. Shri P. S. Rajagopal Naidu
35. Shri S. C. Karayalar
36. Shri H. P. Saksena
37. Shri P. N. Sapru
38. Shri P. D. Himatsingka
39. Shri C. L. Varma
40. Shri Rama Bahadur Sinha
41. Shri V. Prasad Rao
42. Shri Jaswant Singh
43. Shri Rajendra Pratap Sinha
44. Shri N. R. Malkani
45. Shri M. C. Shah.

DRAFTSMEN

Shri K. V. K. Sundarām, *Special Secretary, Ministry of Law.*
Shri G. R. Rajagopal, *Additional Secretary and Chief
Draftsman, Ministry of Law.*

SECRETARIAT

Shri P. K. Patnaik, *Under Secretary.*

Report of the Joint Committee

1. The Chairman of the Joint Committee to which the *Bill further to amend the Constitution of India was referred, having been authorised to submit the report on their behalf, present their Report, with the Bill annexed thereto.

2. The Bill was introduced in the Lok Sabha on the 3rd May, 1956. The motion for reference of the Bill to a Joint Committee of the Houses (*Vide* Appendix I) was moved by Shri M. C. Shah on the 9th May, 1956 and was discussed in the Lok Sabha and adopted on the same day.

3. The Rajya Sabha discussed the motion on the 16th May, 1956, and concurred in the said motion with a recommendation that the Committee might be instructed to report by the 23rd May, 1956 instead of the 18th May, 1956 as provided in the original motion. (*Vide* Appendix II).

4. The message from Rajya Sabha was read out to the Lok Sabha on the 16th May, 1956.

5. A motion for concurrence in the said recommendation of the Rajya Sabha was moved by Shri M. C. Shah in the Lok Sabha on the 17th May, 1956 and was adopted on the same day. (*Vide* Appendix III).

6. The Committee held three sittings in all.

7. The first sitting of the Committee was held on the 18th May, 1956 to draw up a programme of work.

8. The Committee considered the Bill clause by clause at their sitting held on the 19th May, 1956.

9. The Committee considered and adopted the Report on the 21st May, 1956.

10. The Committee do not consider any amendment in the Bill necessary and have approved of it as introduced.

11. The Committee recommend that the Bill as introduced in the Lok Sabha be passed.

K. S. RAGHAVACHARI,

NEW DELHI;

Chairman,

The 21st May, 1956.

Joint Committee.

Notes**I**

In a consequential way, out of this Bill one vital matter springs up for serious consideration. Now, by the new clause (3) to art. 286 proposed under clause 4 of this Bill, the Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act, 1952 will become inoperative and Parliament can regulate any tax on goods declared to be of special importance in inter-State trade or commerce. In intra-State trade, the State will have unrestricted power to impose any tax on goods essential or necessary for the life of the community. I do not mean that State Legislatures will be unreasonable; nor do I intend to curtail their power or responsibility. But it will be difficult to have uniformity with regard to the policy and quantum of tax in respect of those goods in all the States. So, it becomes incumbent on the Centre to confer with the States on this important issue and bring the necessary measure without delay, so that the present anomaly in not having retrospective effect to the Essential Goods Act of 1952 as well as the resulting situation out of the Constitution (Tenth Amendment) Bill can both be avoided and uniform protection, to the extent possible, can be given.

K. T. ACHUTHAN.

NEW DELHI;
The 21st May, 1956.

II

I wish to draw attention to clause (3) of article 286 of the Constitution. I agree to the new clause (3) as passed by the Joint Committee. The former clause (3) relating to Intra-State trade with regard to "goods essential to the life of the community" has been dropped in deference to the recommendations of the Taxation Enquiry Commission and the wishes of the State Ministers. Changed circumstances requiring further mobilisation of all resources for development work necessitate the removal of former restrictions on taxes on essential commodities.

But I am of opinion that sales tax on "necessaries" for the poorest part of the community should only be undertaken with the advice of the Union Government. I would even limit such "necessaries" to the staple food of the poorer section of the community, which may be millets in one part, rice in another, ragi in a third. Other food grains which are the food of less poor sections may be taxed. I would even include salt and gur in this category of necessities of food.

The new clause (3) to article 286 makes two changes. In place of "essential goods" it mentions "goods of special importance". Secondly such goods come within the purview of the Parliament, if they form part of inter-State trade. It appears to me that goods of special importance will be far more restricted in number than "essential goods". But I suggest that staple food-grains and salt should be considered goods 'of special importance in inter-State trade'. Such inclusion will give the necessary protection to the poorest classes and also introduce some uniformity about the rates of levy.

N. R. MALKHANI.

NEW DELHI;
The 21st May, 1956.

III

According to the original view of the framers of the Constitution, trade, commerce or intercourse in the territories of India was to be free. It was felt that within the different parts of the territory of India, that is Bharat, there should not be any provincial or parochial trade barriers so that the flow of trade, as life blood in the different parts of the human organism, may be unrestricted and all parts of India may feel the oneness and the unity of India. If really the country is one, the natural benefits of one part must be regarded as the common heritage of the entire people as a whole.

In this view, the cloth manufactured in Bombay, coal quarried in Bihar and the wheat and gram produced in Punjab must be available to the entire inhabitants of India at the same price except as modified by cost of transport. Anyhow, the various provinces of India where the goods are produced should not be able to charge such price from other provinces as would excessively profit their traders to the detriment of the people of the provinces where these articles are not produced in sufficient quantities. All talk of one country, one nation and the unity of India would be unreal and meaningless if the people are not made to feel that by virtue of their fundamental rights they can be fully and equally benefitted by all the benefits conferred by Nature on the various parts of India or artificial improvements or implementation of the various projects executed by the Government and the people of the country taken as a whole. The original Article 16 which guaranteed the fundamental right of freedom of trade, commerce and intercourse in the territory of India was subsequently changed and subjected to the provisions of any law made under Article 244 and any law made by Parliament, and ultimately these provisions took the shape of articles 301 to 306 of the Constitution.

Article 286 constitutes one aspect of the essential problem of trade and commerce in the territory of India.

Ordinarily, all taxes on trade and commerce in inter-State sales and purchases of goods are in the nature of restrictions, and unless public interest demands their imposition, they are not justifiable and tamper with such freedom.

Part XIII of the Constitution—Articles 301 to 306—deals with such trade and commerce, and Parliament even cannot impose any restrictions on the freedom of trade and commerce between one State and another, or within a part of the territory of India unless it be in the public interest to do so. The States are only permitted to impose reasonable restrictions on such freedom of trade and commerce if they are required in the public interest, but only with the previous permission of the President. Thus the essential condition of public interest justifying the imposition of such restrictions must be satisfied before any tax is imposed. Thus the right of freedom of trade is justiciable as also a cognate right under Article 19 subject to the conditions given in clause (6) of that Article. Anyhow, so far as the States are concerned, such a right is undoubtedly justiciable as the word 'reasonable' before the word 'restrictions' indicates. In my humble opinion, therefore, the provisions of Part XIII of the Constitution must be satisfied before any taxation by any law made by Parliament or by a State Legislature can be imposed, and it must be made clear by the use of express words like these: "subject to the provisions of Part XIII of the Constitution" in Article 286 or the relevant entries 92A and 54 in the Lists.

According to the present provisions of Article 286, the States could impose taxes on the sale or purchase of goods in inter-State trade if the Parliament removed the ban laid on them by virtue of sub-section (2). In regard to such goods as have been declared to be essential for the life of the community no law made by State Legislatures could be effective unless such law was reserved for the consideration of the President and was assented to by him. Thus, except in so far as the State Legislatures had already before such declaration was made imposed such tax, it is not possible to impose such taxation without the consent or permission of the Central Government. Thus, in regard to inter-State trade, the powers of the State Legislatures are limited, and in regard to essential articles they are unable to impose taxes unless the Centre allows them to do so. The framers of the Constitution specially reserved this power for the Centre in the interests of the common man.

The present amendment gives the entire jurisdiction over inter-State trade to the Centre, and in future no question of ban being removed would arise. Nor would the question if Central Legislature could itself enact such a law or not would arise. The Gordian Knot is cut and in regard to inter-State trade the Parliament will alone

be competent to enact laws. In regard to transactions relating to imports and exports or to such transactions of sale or purchase outside the State, the State Legislatures will as before not be competent to impose taxes and the Centre will formulate the principles to determine when a sale or purchase of goods took place in any of the ways mentioned above as also when a sale or purchase of goods took place in the course of inter-State commerce or trade.

In regard to inter-State trade an important change is going to be made by the amendment. The powers of the Centre in regard to all articles declared by it to be essential for the life of the community are being substantially curtailed and it will no longer be able to ensure by its powers of veto that articles essential to the life of the community remain immune from taxation. Today, the President by withholding his consent can totally prevent taxation of essential articles by the States. This amendment will deprive the Centre of its ability to give protection to the common man from taxation of essential articles by the State Legislatures. The present powers of Parliament will instead be substituted by the power to impose restrictions and conditions in respect of levy, rates and the incidents of the tax to 'goods declared by Parliament by law to be of special importance in inter-State trade or commerce.' The States will, subject to this restriction, be free to impose any tax on sale or purchase of goods within the State.

The Taxation Enquiry Commission have been pleased to indicate on page 61 (Vol. III) what in their opinion these goods (of special importance) are. They are coal, iron and steel, cotton, hides and skins, oilseeds and jute. They have further emphasised that this list should not be extended.

These six articles do not include many of the items declared to be essential for the life of the community by Parliament in 1953. Thus, the Constitution (Tenth Amendment) Bill robs the Parliament of its paramount power of saving and giving respite to the poorest in the land from the devastating and destructive effects of arbitrary and despotic taxation by the State Legislatures in situations when they are driven to it as the only escape from financial commitments and economic cataclysms.

The Taxation Enquiry Commission (on page 63 para. 2) says: 'In view of the need for additional revenue for the developmental and social welfare activities the tax system had to be so fashioned that as many people as possible contribute to the Exchequer in accordance with their individual capacities'. Our Hon'ble Finance Minister has made no secret of his opinion that in order to implement our development schemes there is no escape from taxing the common man. In spite of the reluctance of every person to tax the common man who is already so overburdened with taxes it appears to me

that the view expressed by the Taxation Enquiry Commission and the Hon'ble Finance Minister is one from which no difference is possible except in a small measure.

I cannot reconcile myself to the view that even to implement the development schemes one should resort to tax the very barest of necessities of the poorest in the land. We were told sometime back in Parliament that an ordinary man in Orissa earns only a few annas a day hardly sufficient to keep body and soul together. I am loath to agree that his salt, foodgrains, cloth and everyday necessities should be taxed. You may tax even the essentials of the life of the community in general and part with the powers of the Centre in this behalf. To allow the State Legislatures to tax even the bare necessities of life of the poorest in the land is dangerous in the extreme and I cannot agree that the Parliament should be deprived of its ability to give protection in at least those provinces where such articles have not so far been taxed. If I had my own way, I would like to deprive such provinces, as are exercising these powers today, of such powers.

Even if the Government did not accept the recommendations of the Taxation Enquiry Commission in regard to the specification of these goods I do not know if the Government would regard these goods which constitute the bare necessities of life to be articles of special importance within the meaning of the proposed clause (3) to art. 286 of the Constitution. The Government have already declared that they have accepted the report and the recommendation of the Taxation Enquiry Commission.

Thus there is every likelihood that the fundamental and essential interests of the poorest in the land which the Central Government is so rightly solicitous to preserve, protect and advance may be jeopardised if the present Clause (3) of Art. 286 is abrogated. In my humble opinion, the present provision of Article 286(3), which is the strongest bulwark for the weak and the poor and safeguards them against the vagaries of the State Legislatures, should be kept in tact.

I am going to the extreme length when I say that if inexorable necessity forces us we might agree to substitute the words 'essential to the life of the community' by the words 'necessaries of life such as foodgrains, salt, coarse cloth and kerosene'. I would like to add a further provision to clause 4 in respect of articles not covered by the proposed 286(3) that in regard to them the Parliament may be given further powers in respect of levy, rates and other incidents with a view to secure uniformity, equitable incidence and freedom from taxation of the bare necessities of life in case the original 286(3) is taken away from that article. It is politically wrong to add to public dissatisfaction by allowing the State. Legislatures to have their

own way in imposing such taxes in the manner and amount they like. These direct taxes are extremely irksome and unduly far against the susceptibilities of those who are asked to pay on every occasion this tax separately from their purse to remind every citizen that this depredation is made by the State. If the tax relates to the bare necessities of life, it is very galling to the poorer section of the society, who feel that the State is doing nothing to improve their forlorn condition except taxing them. The feeling may be unjust but there it is. It is therefore much better that some other mode of taxation be adopted and the constant source of irritation be removed.

Moreover, there must be uniformity of taxation in the whole country about the sales tax. Different systems in different parts of the country are not justifiable. If the sales tax must continue, the luxury articles and the richer section of the community who can bear the burden may be taxed in a uniform manner, though in regard to them also the better method would be by indirect taxation in the form of enhanced price of these articles.

It was expected that the Government of India will save the articles essential for the life of the community from taxation and bring about uniformity in the States about the sales tax. But it appears that the demands of development schemes are too strong. I think it is desirable to meet this demand as ultimately the entire country will benefit by the success of these schemes. Yet it is unjustifiable to call for sacrifice from those who are unable to bear it. I only plead and pray for provision of ability for the Centre to protect them and nothing more.

NEW DELHI;

THAKUR DAS BHARGAVA.

The 22nd May, 1956.

IV

While giving my consent to the report of the Joint Committee I would like to make it clear that in the new Clause (3) to Article 286 proposed under clause 4 of the Bill the words "of special importance" should include all articles essential to the life of the community.

In my opinion, it is very necessary that the Union Government should exercise some measure of control over State Governments, as regards taxing of such commodities as foodgrain, salt etc.

NEW DELHI;

B. P. JHUNJHUNWALA.

The 22nd May, 1956.

made by hon'ble Members while speaking on the motion for reference of the Bill to Joint Committee.

The main point which I wish to emphasise is that there should be restriction to impose taxes on essential goods in inter-State trade or commerce. At least foodgrains which are necessary for the life of the community in any part of the country should have been made free from any kind of taxation by Parliament or the State concerned. Similarly, salt which is of great importance to the community at large should be exempted as it has been done in respect of newspapers. Though in clause 4 of the Bill, in the proposed clause (3) to Article 286, some restriction has been put in regard to the system of levy and rates of the tax as Parliament may by law specify, the words "of special importance" have made the clause vague in exercising the power strictly in respect of salt, foodgrains and other essential goods for the life of the common people in the country.

NEW DELHI;

SIVAMURTHI SWAMI

The 22nd May, 1956.

IV

The Constitution as the organic law should be placed on a pedestal of its own and should not be amended so frequently as we are doing.

The present amendment is sought to be justified by the Report of the Taxation Enquiry Commission and the divergence of the judicial opinion as evidenced by the judgments of the Supreme Court in the *Bombay United Motors Case* (1953) SCR 1069 and in the *Bengal Immunity Case* (1955) SCR 603.

Really, the evils of multiple taxation were aggravated by the judgment of the Supreme Court in the *United Motors Case*.

In that case the Supreme Court held that Explanation in clause (1) of Article 286 by means of a legal fiction converted certain inter-State transactions into intra-State transactions and it was further held that clause (2) of Article 286 was excluded as a result of the legal fiction enacted in the Explanation. This led to multiple taxation by the States.

What the *Bengal Immunity Case* decided was that Article 286 imposed four separate and independent restrictions on the legislative competency of the State to make a law with respect to the matters enumerated in Entry 54 of List II of the Seventh Schedule.

In order to make the ban effective and to leave no loophole the Constitution-makers considered the different aspects of sales or purchases of goods and placed checks on the legislative powers of the States at different angles. But Das C. J. pointed out that these bans were separate and independent.

The Gordian Knot was cut by the Supreme Court in *the Bengal Immunity Case*. The learned Judge held that the Explanation to clause (1) cannot be legitimately extended to clause (2) of Article 286 either as an exception or as a proviso and cannot be read as curtailing or limiting the ambit of clause (2).

Therefore, the latest judgment of the highest Court in India which over-ruled the earlier judgment resolved the difficulties created by the first judgment. The effect of the later judgment is that unless Parliament lifts the ban by appropriate legislation, no State can levy any tax on inter-State sales or purchases. Moreover, Parliament can impose under Article 286 (2) any condition or restriction it likes when lifting such ban.

The Taxation Enquiry Commission Report was written before the judgment in *the Bengal Immunity Case* was delivered.

There may be some argument advanced in favour of incorporating in the Union List "Taxes on the sale or purchase of goods in the course of inter-State trade or commerce". But it is a serious thing to give the Parliament the power to determine the ambit and scope of a legislative entry. This would in effect oust the jurisdiction of the Courts to decide whether the Parliament has legislated within the ambit of its authority.

Under Article 246 Parliament has exclusive powers to make any law "with respect to" any of the matters enumerated in List I. The expression "with respect to" indicates the ambit of the power of the respective legislature as regards the subject matter comprised in the relevant entries. The established canon of construction is that, in plth and substance, legislation must be comprehended in the item or category of legislation. It would not be proper for Parliament to determine the scope and extent of its own legislative competence by its own legislation.

It is for the honourable Members of Parliament to examine the provisions and to consider seriously whether the new clause (3) of Article 286 as proposed in the Bill would not violate the fundamental constitutional principle regarding enumerated powers of legislation.

(b) after clause (2), the following clause shall be inserted, namely:—

“(3) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce.”. 5

Amendment
of article
286.

4. In article 286 of the Constitution,—

(a) in clause (1), the *Explanation* shall be omitted; and

(b) for clauses (2) and (3), the following clauses shall be substituted, namely:—

“(2) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1). 10

(3) Any law of a State shall, in so far as it imposes, or authorises the imposition of, a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce, be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify.”. 15

M. N. KAUL,
Secretary.

